

Media Release

13 July 2010

For immediate release

Appeal Helps Councils Continue to Shirk Responsibility

The Supreme Court has handed down a decision granting leave to the North Shore City Council to have its appeal of the Sunset and Byron cases heard in that Court. If this appeal succeeds it will change the landscape for those investor owners or subsequent owners seeking to recover their losses for leaky or defective buildings from any of the Councils throughout the country.

“Councils have responsibility, as a Building Consent Authority, to ensure that they properly inspect a property during its construction, regardless of whether that property is to be used as a home or for an investment,” says John Gray, President of the Home Owners and Buyers Association (HOBANZ).

“In our view they continue to defend what we say is the indefensible when it comes to their abject failure to understand and properly discharge their duties as Building Consent Authorities under the Building Act.”

The North Shore City Council is seeking to minimise its liability owed to investor owners and to subsequent owners in apartment or terraced housing type complexes such as the Sunset and Byron complexes by arguing that investor owners are entering into a commercial transaction and therefore the Council’s duty of care is removed.

“This is a purely legal attempt at ring-fencing their liability in these matters and turning their backs on their failures. It certainly is not justice,” says Mr Gray. “We say there should be no distinction made between ‘Ma & Pa’ investors and ‘Ma & Pa’ owner/occupiers. They all have a huge reliance on Councils diligence and competence.”

Of course there are other responsible parties, but the Councils had the power and the duty to enforce the required building standards and for a multitude of reasons they have failed. This permissiveness has allowed inexperienced, and in some cases incompetent, design and building personnel to construct these defect-ridden buildings.

The argument that investor owners are somehow more sophisticated and have means by which they could have protected themselves is fundamentally flawed. We say that in reality this is a fallacy and a fanciful legal argument that we hope the Supreme Court in their wisdom will see through.

The most important aspect to this issue is that there is no system in New Zealand that enables purchasers to protect themselves.

There has up until recently been no licensing requirement for designers, builders and key sub-trades, so the regulatory environment (in this case the total lack of regulatory control in terms of licensing) has put a greater burden on the Councils as they are the only legal entity at the 'coalface' that ought to have been able to have prevented these failures.

Furthermore, unlike the United Kingdom, we don't have a mandatory requirement for a pre-purchase building survey. In fact, a majority of the pre-purchase inspectors in the New Zealand marketplace are not accredited by either BOINZ (Building Officials Institute of New Zealand) or the NZIBS (New Zealand Institute of Building Surveyors) and in our experience many are incompetent and/or do not have appropriate indemnity insurance that would provide a back-stop for the client if the inspector gets it wrong.

It is also important to note that despite a recommendation by the Building Industry Council to do so, the National Government that introduced the new Building Act in 1991 failed to introduce a 'Building Warranty' scheme.

There are also issues as to how much an inspector can actually see when the most crucial elements of construction can only be inspected during the construction phase – and that duty falls on the Building Consent Authorities.

The North Shore City Council is also arguing that it does not owe a duty of care to subsequent owners. To suggest that a subsequent owner places less or no reliance on Councils, as compared to the first owner, and is therefore not owed a duty of care is an absurdity and an insult to the tens of thousands of good New Zealanders who could have their lives destroyed if they discover that they have a defective home that the respective Council ought to have prevented being built.

This Appeal is a desperate move to avoid a 'tsunami' of claims related to large multi-unit complexes in particular that are going to hit the beaches in coming years.

Many of these complexes are suffering problems much more serious than leaks – some are so structurally flawed that they are at risk of catastrophic failure and the Councils involved have been woeful in the discharge of their duties around issuing Building Consent, carrying out inspections during the construction phase and ultimately issuing Code Compliance Certificates for buildings that in some cases are less than 6 years old and will have to be demolished. This is a severe indictment on the respective Councils and the so-called building professionals involved.

All in all this must be a warning to people who are looking at buying into multi-unit apartment or terraced housing complexes and, indeed, investors in general. They must do extensive due diligence and factor in the extreme risk of building compliance failure to the price that is paid for any home.

And we have great sympathy for the ratepayers in the cities that are affected the most as the potential liability will have a major impact on their rates bills. But the time has come for ratepayers to start asking the hard questions of their own Councils around how they officials have failed all ratepayers in exposing the ratepayers purse to this level of financial risk.



On behalf of home owners and buyers throughout the country, we can only hope that the Supreme Court will stand to protect the interests of those New Zealanders who are or will be suffering as a consequence of Council failures in coming years.

For more information contact:

John Gray

President, Home Owners and Buyers Association NZ

021 66 99 13